

2706  
No. 13044

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United States  
Court of Appeals  
for the Ninth Circuit.

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REPUBLIC PICTURES CORPORATION,  
Appellant,  
vs.

SECURITY-FIRST NATIONAL BANK OF LOS  
ANGELES,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court,  
Southern District of California  
Central Division

FILED  
36  
SEP 28 1951



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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Los Angeles 14, Calif.

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DAVID S. DAVIS,  
9700 Wilshire Blvd.,  
Beverly Hills, Calif.





OPINION

[Clerk's note]: The Opinion of Judge Yankwich, filed April 26, 1951, is not reprinted here in the interest of economy. It is reported in 97 F. Supp. 360.

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In the United States District Court, Southern  
District of California, Central Division

No. 12260-Y

SECURITY-FIRST NATIONAL BANK OF LOS  
ANGELES, a National Banking Association,  
Plaintiff,

vs.

REPUBLIC PICTURES CORPORATION, a  
Corporation,  
Defendant.

AGREED STATEMENT ON APPEAL PURSU-  
ANT TO RULE 76 OF THE RULES OF  
CIVIL PROCEDURE

The parties hereto hereby stipulate and agree that the facts in the above-captioned case are as follows and this agreed statement is hereby submitted in lieu of reporters' and clerks' transcript herein.

The above-captioned action was begun by plaintiff's filing of its complaint herein in the United States District Court for the Southern District of California, Central Division, on September 7, 1950. Answer thereto was filed by defendant, Republic

Pictures Corporation, on October 18, 1950. Cause came on for trial on March 30, 1951, at which time the following facts were found to exist:

1. On September 26, 1944, defendant and one William Rowland, entered into an agreement in writing under the terms of which said Rowland agreed to produce a motion picture photoplay entitled, "A [2\*] Song For Miss Julie," and further agreed that defendant should distribute the same. On October 2, 1944, said agreement was assigned by said Rowland, with the consent of defendant, to Pre-Em Pictures, Inc., a corporation. On October 2, 1944, Pre-Em Pictures, Inc., made, executed, and delivered to plaintiff a mortgage of chattels, including the copyright of said motion picture, as security for the repayment of loans made to Pre-Em Pictures, Inc., by plaintiff. The mortgage was recorded in the Copyright Office of the United States of America.

2. On January 31, 1945, Pre-Em Pictures, Inc., published the motion picture, "A Song For Miss Julie," with notice of copyright, and on February 20, 1945, deposited two copies of the photoplay in the Copyright Office of the United States of America, together with a claim to copyright for the first term of twenty-eight years, in the name of Pre-Em Pictures, Inc. A Certificate of Copyright Registration, Class L. Pub. No. 13089, was issued by the Copyright Office of the United States of America.

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

3. Subsequently, on April 3, 1945, Pre-Em Pictures, Inc., made, executed and delivered to plaintiff another mortgage of said motion picture, including the copyright thereof. This mortgage was recorded in the Copyright Office of the United States of America on April 19, 1945.

4. The mortgages hereinabove referred to were expressly made subject to the rights of defendant under the distribution agreement hereinabove referred to. Under the terms of said mortgages Pre-Em Pictures, Inc., mortgaged, pledged, and assigned to plaintiff the following described property, where-soever situated and located, and whether then owned or thereafter acquired by Pre-Em Pictures, Inc.:

(a) All copyrights obtained or to be obtained in its completed form on a certain motion picture photoplay entitled, "A Song For Miss Julie" from a story by Michael Foster, together with any and [3] all other copyrights obtained or to be obtained in connection with the said picture.

5. In addition, the following described personal property was mortgaged, pledged, and assigned by said mortgagee to plaintiff by Pre-Em Pictures, Inc.:

That certain motion picture photoplay tentatively entitled, "A Song For Miss Julie," from a story by Michael Foster, together with any and all proceeds and avails thereof, and any and all properties and things of value pertaining thereto, specifically including the following:

(a) The motion picture rights to said story and such other rights thereto as mortgagor has or obtains.

(b) The treatment of said story for its motion picture use, together with all scripts used and to be used in connection with said picture.

(c) Motion picture rights to all music and musical compositions used and to be used in said picture for which motion picture rights must be obtained.

(d) All negatives, negative film, sound tracks, positive prints, cut-outs and trims connected with said picture, whether in completed form or in some stage of completion.

(e) The right of mortgagor to any sets, props and similar properties used or to be used in connection with said picture, until such time as said sets, props and similar properties are no longer useful and useable in connection with the production of said picture.

(f) The agreement dated September 26, 1944, with Republic Pictures Corporation (and all [4] amendments and renewals thereof) providing for the distribution of said picture, together with all proceeds thereof and therefrom.

(g) Subject to the rights of said distributor under said distribution agreement, the right to distribute said picture world wide, and all television and sub-standard width rights.

(h) All insurance policies connected with said picture, specifically including negative in-

surance, case insurance, and any insurance on producer, director or stars.

(i) Such rights as mortgagor has the present or future ability to pledge, mortgage or assign in and to all contracts and rights for the use of services and property in connection with the production of said picture, specifically including contracts for the services of directors, cameramen, stars, bit players, contracts for the processing of said film and contracts with studios for studio space and facilities in connection with the production of said picture.

(j) All copyrights on the story, story treatment, script, continuities and music and musical compositions, together with the right to copyright and all rights to renew or extend such copyright.

6. The mortgages were recorded in the Office of the County Recorder of Los Angeles County.

7. The completed motion picture photoplay was delivered to defendant for distribution and is still in distribution by the defendant. [5]

8. On September 20, 1948, plaintiff filed an action in the United States District Court for the Southern District of California, Central Division, entitled, "Security-First National Bank of Los Angeles, a national banking association, plaintiff, vs. Pre-Em Pictures, Inc., a corporation, et al., defendants," which action was numbered 8659-PH, in the files of said court. By said action plaintiff sought to foreclose both of the mortgages hereinabove refer-



(a) The motion picture rights to said story and such other rights thereto as mortgagor has or obtains.

(b) The treatment of said story for its motion picture use, together with all scripts used and to be used in connection with said picture.

(c) Motion picture rights to all music and musical compositions used and to be used in said picture for which motion picture rights must be obtained.

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8. On September 20, 1948, plaintiff filed an action in the United States District Court for the Southern District of California, Central Division, entitled, "Security-First National Bank of Los Angeles, a national banking association, plaintiff, vs. Pre-Em Pictures, Inc., a corporation, et al., defendants," which action was numbered 8659-PH, in the files of said court. By said action plaintiff sought to foreclose both of the mortgages hereinabove refer-

red to. A Notice of Pendency of said action was recorded in the Copyright Office of the United States of America. In said action there was no diversity of citizenship, and jurisdiction was premised upon the theory that the action arose under an Act of Congress relating to copyrights dated March 4, 1909, 35 Stat. 1084, Ch. 320, Sec. 42, Title 17, U.S.C.; Sec. 42, 61 Stat. 652, Ch. 391, Sec. 1, Title 17, U.S.C.; Sec. 28, Title 28, U.S.C.; Sec. 1338(a).

9. On August 13, 1949, the United States District Court for the Southern District of California, Central Division, the Honorable Peirson M. Hall presiding, rendered a decree in favor of plaintiff foreclosing the mortgages hereinabove referred to. Said decree has become final, and a certified copy thereof was recorded in the Copyright Office of the United States of America. Said decree provided for the sale of the properties mortgaged by the said mortgages, and pursuant thereto the United States Marshal for the Southern District of California sold said property at public auction on October 5, 1949, to plaintiff. A certified copy of the Marshal's Certificate of Sale on Foreclosure was recorded in the Copyright Office of the United States of America and in the Office of the County Recorder of Los Angeles County.

10. Defendant in the present action contended that plaintiff had not received good title to the above-described property by reason of the aforementioned foreclosure sale for the reason that the court which decreed and ordered said foreclosure



sale was without jurisdiction so to do, and defendant therefore refused to recognize [6] plaintiff's title in and to said property, whereupon the above action for declaratory relief was commenced.

In the above-captioned action there was diversity of citizenship between the parties in that plaintiff Security-First National Bank of Los Angeles was a national banking association doing business and having a principal place of business in California, and therefore, for purpose of jurisdiction considered as a California corporation and defendant Republic Pictures Corporation was and is a corporation organized and existing under and by virtue of the laws of the State of New York. The amount in controversy in the above-captioned action (the properties mortgaged by the aforementioned chattel mortgages), exceeded the sum of Three Thousand Dollars (\$3,000.00), exclusive of cost and interest.

The sole issue presented upon the foregoing facts was whether the United States District Court for the Southern District of California, Central Division, had jurisdiction in the action entitled, "Security-First National Bank of Los Angeles, a national banking association, plaintiff, vs. Pre-Em Pictures, Inc., a corporation, et al., defendants," there having been no diversity of citizenship in said action, and jurisdiction having existed, if at all, therefore, only under Title 28, U.S.C. Sec. 1338(a). On April 26, 1951, the United States District Court for the Southern District of California, Central Division, the Honorable Leon R. Yankwich, Judge

presiding, entered its written decision in the above-captioned action a copy of which decision is attached hereto as Exhibit "A" hereof, in which decision said court held that the United States District Court for the Southern District of California, Central Division, did have jurisdiction in said foreclosure action by virtue of Title 28, U.S.C. Sec. 1338(a), and ordered that judgment in the above-captioned action should therefore go for the plaintiff.

11. Thereafter and on June 14, 1951, said court made its Findings of Fact and Conclusions of Law, finding among other things, [7] that the requisite diversity of citizenship and jurisdictional amount as hereinabove mentioned in paragraph 10 hereto set forth did exist and entered judgment in the above-captioned action in favor of plaintiff herein. A copy of said judgment is attached hereto as Exhibit "B" hereof.

12. Thereafter and on June 19, 1951, defendant filed in the United States District Court for the Southern District of California, Central Division, its Notice of Appeal in the above-captioned action. A copy of said Notice of Appeal is attached hereto as Exhibit "C" hereof.

#### Statement of Points Relied Upon by Appellant

As heretofore set forth, the sole legal issue presented in the above-captioned action was whether the United States District Court for the Southern

District of California had jurisdiction to enter a decree of foreclosure in the foreclosure action heretofore referred to. The sole point, therefore, upon which appellant herein relies is as follows:

The said foreclosure action being one in which there was no diversity of citizenship and not being a "civil action arising under any Act of Congress relating to patents, copyrights or trade-marks," the United States District Court for the Southern District of California lacked jurisdiction to enter the foreclosure decree in that action and the United States District Court for the Southern District of California, Central Division, erred in the above-captioned action in holding that said court did have the requisite jurisdiction.

LOEB AND LOEB,

HERMAN F. SELVIN,

SAUL N. RITTENBERG,

HARRY L. GERSHON,

By /s/ HARRY L. GERSHON,

Attorneys for Appellant.

LOUIS E. SWARTS, and

STUART L. KADISON, of

PACHT, TANNENBAUM &  
ROSS;

JOSEPH S. DUBIN;

DAVID S. DAVIS, of

WILD, CARLSON &amp; REEVE,

By /s/ STUART L. KADISON;

Attorneys for Appellee. [8]

The foregoing Agreed Statement is hereby approved.

/s/ LEON R. YANKWICH,

District Judge. [9]

## EXHIBIT A

In the United States District Court Southern  
District of California, Central Disision

No. 12260-Y

SECURITY-FIRST NATIONAL BANK OF LOS  
ANGELES, a National Banking Association,  
Plaintiff,

vs.

REPUBLIC PICTURES CORPORATION, a  
Corporation,

Defendant.

Honorable Leon R. Yankwich, Judge.

## DECISION

The above-entitled cause, heretofore, argued and submitted, is now decided as follows:

Upon the grounds stated in the Opinion filed herewith, judgment and declaration will be for the plaintiff.

(1) That the foreclosure proceedings instituted in the United States District Court for the Southern District of California, Central Division, entitled "Security-First National Bank of Los Angeles, etc., plaintiff, vs. Pre-Em Pictures, Inc., etc., et al., defendants," being No. 8659-PH, in the files of said Court, was and is a proceeding arising under an Act of Congress relating to copyrights, dated March 4, 1909, 35 Stat. 1084, Ch. 320, Sec. 1, Title 17, U.S.C., Sec. 28; Title 28, U.S.C., Sec. 1338(a).

(2) That said Court had jurisdiction to render said decree of foreclosure in said proceedings:

(3) That the plaintiff is the legal owner of the [10] personal property referred to in the chattel mortgages and said decree of foreclosure and certificate of sale, subject to the rights of defendant under the distribution agreement.

(4) That the plaintiff and defendant may enter into any arrangement covering the distribution of said motion picture photoplay or providing for the termination of said distribution agreement without the necessity of plaintiff's furnishing any indemnity agreement.

(5) Costs to the plaintiff.

Findings and Judgment to be prepared by counsel for the plaintiff under Local Rule 7.

Done in open court this 26th day of April, 1951.

LEON R. YANKWICH,  
Judge. [11]



## EXHIBIT B

In the United States District Court Southern  
District of California, Central Division

No. 12260 Y

SECURITY-FIRST NATIONAL BANK of LOS  
ANGELES, a National Banking Association,  
Plaintiff,

vs.

REPUBLIC PICTURES CORPORATION, a  
Corporation,  
Defendant.

## JUDGMENT

The above-entitled cause, having come on regularly for trial on the 30th day of March, 1951, in the above-entitled Court, before the Hon. Leon R. Yankwich, United States District Court Judge, without a jury, and plaintiff, appearing by its attorneys, Louis E. Swarts; Joseph S. Dubin; Wild, Carlson & Reeve; and David S. Davis; and defendant, appearing by its attorneys Loeb & Loeb; Saul N. Rittenberg; and Harry Gershon; and Bank of America National Trust & Savings Association, appearing as Amicus Curiae by its attorneys, Hugo A. Steinmeyer; Robert H. Fabian; and Robert Van Buskirk; and the Stipulation of Facts filed by the parties having been received in evidence, and evidence, both oral and documentary having been [12] introduced and the cause argued, and the Court, having heretofore made and caused to be filed, its

written Decision, Opinion and Findings of Fact and Conclusions of Law, and the Court, being fully advised, and good cause appearing therefor,

It Is Ordered, Adjudged and Decreed  
as follows:

I.

That the foreclosure proceedings instituted in the United States District Court for the Southern District of California, Central Division entitled "Security-First National Bank of Los Angeles, a national banking association, Plaintiff, vs. Pre-Em Pictures, Inc., a corporation, et al., Defendants," being No. 8659-PH in the files of said court, was and is a proceeding arising under an Act of Congress relating to copyrights dated March 4, 1909, 35 Stat. 1084, Ch. 320, Sec. 1, Title 17, U.S.C. Sec. 28; Title 28, U.S.C. Sec. 1338(a).

II.

That the United States District Court for the Southern District of California, Central Division, had jurisdiction to render the Decree of Foreclosure made and entered in said proceedings.

III.

That plaintiff is the legal owner of the personal property referred to in the chattel mortgages and said Decree of Foreclosure and the Certificate of Sale given pursuant thereto, subject to the rights of defendant under the Distribution Agreement.

## IV.

That plaintiff and defendant may enter into any arrangement covering the distribution of the motion picture photoplay involved [13] in said foreclosure proceedings or providing for the termination of said Distribution Agreement and that plaintiff need not furnish any indemnity agreement in connection therewith.

## V.

That plaintiff shall recover its costs herein.

The Clerk is directed to enter this Judgment.

Dated at Los Angeles, California, this .. day of June, 1951.

LEON R. YANKWICH,  
United States District Court  
Judge.

Approved as to form:

LOEB & LOEB,  
SAUL N. RITTENBERG,  
By SAUL N. RITTENBERG,  
Attorneys for Defendant. [14]



EXHIBIT C

In the United States District Court, Southern  
District of California, Central Division

No. 12260-Y

SECURITY-FIRST NATIONAL BANK of LOS  
ANGELES, a National Banking Association,  
Plaintiff,

vs.

REPUBLIC PICTURES CORPORATION, a  
Corporation,  
Defendant.

NOTICE OF APPEAL

To the Clerk of the Above-Entitled Court:

You Will Please Take Notice that defendant  
hereby appeals to the United States Court of Ap-  
peals for the Ninth Circuit from all parts of the  
judgment heretofore entered in the above-entitled  
action on June 14, 1951.

Dated June 19, 1951.

LOEB and LOEB,

SAUL N. RITTENBERG,

HARRY L. GERSHON,

By /s/ HARRY L. GERSHON,  
Attorneys for Defendant.

[Endorsed]: Filed July 30, 1951. [15]

[Title of District Court and Cause.]

### ORDER EXTENDING TIME

It is hereby ordered that the time within which to file the Record on Appeal in the above-entitled case and docket said Appeal is extended to and including Thursday, August 2, 1951.

Dated July 30, 1951.

/s/ LEON R. YANKWICH,  
Judge.

[Endorsed]: Filed July 30, 1951.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 16, inclusive, contain the original Agreed Statement on Appeal Pursuant to Rule 76 of the Rules of Civil Procedure and Order Extending Time which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$1.60 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 30th day of July, A. D. 1951.

[Seal] EDMUND L. SMITH,  
Clerk,

By /s/ THEODORE HOCKE,  
Chief Deputy.

[Endorsed]: No. 13044. United States Court of Appeals for the Ninth Circuit. Republic Pictures Corporation, Appellant, vs. Security-First National Bank of Los Angeles, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed August 6, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 13044

REPUBLIC PICTURES CORPORATION,  
Appellant,

vs.

SECURITY-FIRST NATIONAL BANK OF LOS  
ANGELES,

Appellee.

APPELLANT'S STATEMENT OF POINTS  
UNDER RULE 19(16)

Pursuant to rule 19(6) of the Rules of the United States Court of Appeals for the Ninth Circuit, appellant states herewith the sole point to be relied upon by it in the within appeal, to wit:

The United States District Court for the Southern District of California, Central Division, erred in holding that an action for the foreclosure of a mortgage of a copyright is an action arising under an Act of Congress relating to copyrights and is therefore within the jurisdiction of a United States District Court, notwithstanding that there is no diversity of citizenship in said action.

Appellant and appellee have heretofore stipulated and agreed that the record material to the consideration of the within appeal consists solely and exclusively of the agreed statement heretofore subscribed by appellant and appellee and approved by the Hon. Leon R. Yankwich, Judge of the United

States District Court for the Southern District of California, Central Division, which agreed statement has heretofore been filed with the above-entitled court. Said agreed statement is therefore designated by appellant, together with the opinion of the trial court reported at 97 F. Supp. 360, as the record on appeal pursuant to Rule 19(6).

LOEB and LOEB,

HERMAN F. SELVIN,

SAUL N. RITTENBERG,

HARRY L. GERSHON,

By /s/ HARRY L. GERSHON,

Attorneys for Appellant.

[Endorsed]: Filed August 10, 1951.

